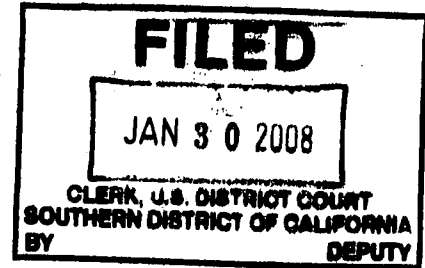


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Telephone: (619) 400-2425
9 Facsimile: (619) 400-2428

10 Attorneys for Defendant
11 SAN DIEGO COUNTY REGIONAL AIRPORT
AUTHORITY
12

13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA

15 JOSE HERNANDEZ,
16 Plaintiff,
17 v.

CASE NO.

NOTICE OF REMOVAL OF ACTION:
UNDER 28 U.S.C. § 1442(B)
(FEDERAL QUESTION)

18 SAN DIEGO COUNTY
REGIONAL AIRPORT
19 AUTHORITY, a public entity; and
DOES 1 through 12, inclusive,
20 Defendants.
21

'08 CV 0184 L CAB

22 ///

23 ///

24 ///

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

2 PLEASE TAKE NOTICE that defendant San Diego County Regional
3 Airport Authority ("the Authority") hereby removes the above-referenced case
4 from the Superior Court of the State of California, County of San Diego, to the
5 United States District Court for the Southern District of California. The state court
6 action is a civil action that this Court has original jurisdiction to decide under
7 28 U.S.C. section 1331 (federal question jurisdiction) and is one that may be
8 removed to this Court by the Authority pursuant to 28 U.S.C. section 1441. The
9 specific basis for removal of this action is as follows:

10 1. On September 1, 2006, Plaintiff Jose Hernandez ("Plaintiff") filed an
11 action in the Superior Court of the State of California, County of San Diego,
12 Central Division, entitled *Jose Hernandez v. San Diego Regional Airport Authority*
13 *and Does 1 through 12, Inclusive*, as Case Number GIC 871979.

14 2. On September 5, 2006, the Authority was served with a copy of the
15 complaint for damages, a summons from the state court, a notice of case
16 assignment, and alternative dispute resolution process information. A true and
17 correct copy of the complaint is attached hereto as Exhibit 4. This original
18 complaint asserted causes of action based only on California state law.

19 3. On October 5, 2006, the Authority filed a demurrer and motion to
20 strike portions of the complaint. True and correct copies of the moving papers are
21 attached hereto as Exhibits 5-8. Before the matter could be heard, Plaintiff filed a
22 First Amended Complaint ("FAC") and served the FAC on December 11, 2006.
23 The FAC asserted causes of action based only on California state law. A true and
24 correct copy of the FAC is attached hereto as Exhibit 11.

25 4. On January 10, 2007, the Authority filed a demurrer and motion to
26 strike portions of Plaintiff's FAC. True and correct copies of the moving papers
27 are attached hereto as Exhibits 14-18. In lieu of ruling on the merits of the
28 Authority's demurrer and motion to strike, the Court deemed Plaintiff's Second

1 Amended Complaint ("SAC") (submitted and served with Plaintiff's Opposition to
2 the Authority's moving papers), filed. True and correct copies of Plaintiff's
3 moving papers and the SAC are attached hereto as Exhibits 19-21. The SAC
4 asserted causes of action based only on California state law.

5 5. On April 19, 2007, the Authority filed a demurrer and motion to strike
6 portions of Plaintiff's SAC. True and correct copies of the moving papers are
7 attached hereto as Exhibits 24-28. The Authority's demurrer and motion to strike
8 were overruled, and the Authority filed its answer to the SAC on May 29, 2007. A
9 true and correct copy of the Authority's answer to the SAC is attached hereto as
10 Exhibit 37.

11 6. On August 31, 2007, the Authority filed its motion for summary
12 judgment or, in the alternative, summary adjudication as to the SAC. True and
13 correct copies of the moving papers are attached hereto as Exhibits 38-55.

14 7. On December 14, 2007, the Court granted the Authority's motion for
15 summary adjudication as to the only cause of action in the SAC but granted
16 Plaintiff leave to file a Third Amended Complaint ("TAC").

17 8. Plaintiff served the Authority with the TAC on December 28, 2007,
18 via United States Postal Mail, naming the San Diego Regional Airport Authority
19 and Thella Bowens, individually, as defendants and asserting for the first time
20 claims arising under federal law, in particular, 42 U.S.C. section 1983. A true and
21 correct copy of Plaintiff's TAC is attached hereto as Exhibit 95. The Authority
22 received the TAC on December 31, 2007.

23 9. The Authority filed an answer to the TAC on January 29, 2008. A
24 true and correct copy of the answer is attached hereto as Exhibit 96.

25 10. Pursuant to 28 U.S.C. section 1446(a), all process, pleadings, and
26 orders served on the Authority are attached hereto and described in the
27 accompanying Index of Exhibits.

28 ///

1 11. This action is a civil action that this Court has original jurisdiction to
2 decide under 28 U.S.C. section 1331, and is one which may be removed to this
3 Court by the Authority pursuant to the provisions of 28 U.S.C. section 1441(b)
4 because, as alleged in the TAC, Plaintiff's sole cause of action arises under 42
5 U.S.C. section 1983:

6 This action arises under 42 U.S.C. section 1983, which
7 provides that every "person" who, under color of any
8 statute ordinance, regulation, custom, or usage of any
9 State subjects, or "causes to be subjected," any person to
10 the deprivation of any federally protected rights,
11 privileges, or immunities shall be civilly liable to the
12 injured party; and the federal Constitution due process
13 clause of the Fourteenth Amendment; and violations of
14 the provisions of the California Constitution, Article I,
15 section 7, subdivisions (a) and (b), Article I section 26,
16 et. seq., including, but not limited to violation of the
17 Plaintiff's due process liberty interest by failing to
18 provide him with a timely hearing and denial of the equal
19 protection of the laws. (TAC ¶ 1)

20 12. Defendant Thella Bowens has not yet been served with the TAC.

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NOTICE OF REMOVAL

1 13. On January 30, 2008, a copy of this notice is being served on Plaintiff
2 and is being filed with the Clerk of the Superior Court for the State of California
3 for the County of San Diego.

4
5 Dated: January 30, 2008

PAUL, PLEVIN, SULLIVAN &
CONNAUGHTON LLP

6
7
8 By: 

FRED M. PLEVIN
SANDRA L. MCDONOUGH
ALBERT R. LIMBERG
Attorneys for Defendant
SAN DIEGO COUNTY
REGIONAL AIRPORT
AUTHORITY

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JS 44
(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of process on the papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1972, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Jose Hernandez

DEFENDANTS

San Diego County Regional Authority
and
Thella Bowers

FILED
JAN 30 2008
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY 0184 L CLERK

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT San Diego
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Cathryn Chinn
1901 First Avenue, Suite 400
San Diego, CA 92101
619-294-9183

ATTORNEYS (IF KNOWN)

Albert R. Limberg (SBN 211110)
Paul, Plevin, Sullivan & Connaughton
401 B Street, Tenth Floor
San Diego, CA 92101
619-237-5200

II. BASIS OF JURISDICTION (PLACE AN 'X' IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN 'X' IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PT | DEF | | PT | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY. Plaintiff filed an action arising under 42 U.S.C. section 1983, and defendant San Diego County Regional Airport Authority is removing this action to Federal Court.

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 161 Medicare Act <input type="checkbox"/> 162 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 163 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 781 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 460 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 610 Motion to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 630 General <input type="checkbox"/> 635 Death Penalty <input type="checkbox"/> 640 Mandamus & Other <input type="checkbox"/> 650 Civil Rights <input type="checkbox"/> 655 Prison Conditions		

VI. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 Original Proceeding
☒ 2 Removal from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$
UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ YES ☒ NO

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

Docket Number

DATE

SIGNATURE OF ATTORNEY OF RECORD

January 30, 2008

PAID \$350 1/30/08 BY KCPT #146495

::ODMA\PCDOCS\WORDPERFECT\22816\1 January 24, 2000 (3:10pm)

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

146995 - BH

**January 30, 2008
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Civ Fil Non-Pris

USAO #: 08CV0184 CIVIL FILING

Judge.: M. JAMES LORENZ

Amount.: \$350.00 CK

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FROM: HERNANDEZ V. SAN DIEGO CO.
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CIVIL FILING

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13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA

15 JOSE HERNANDEZ,

16 Plaintiff,

17 v.

18 SAN DIEGO COUNTY
19 REGIONAL AIRPORT
20 AUTHORITY, a public entity; and
DOES 1 through 12, inclusive,

21 Defendants.

CASE NO.

PROOF OF PERSONAL SERVICE

'08 CV 0184 L CAB

1 I, the undersigned, certify and declare that I am a citizen of the United
2 States, over the age of eighteen, employed in the County of San Diego, State of
3 California, and not a party to the within-entitled action. My business address is
4 P.O. Box 3969, San Diego, CA 92163.

5 On January 30, 2008, I served a true copy of the within:

- 6 • **CIVIL CASE COVER SHEET;**
7 • **NOTICE OF REMOVAL OF ACTION: UNDER 28 U.S.C. §**
8 **1442(B) (FEDERAL QUESTION) with EXHIBITS 1-96.**

8 by delivering for personal service to the following:

9 Cathryn Chinn, Esq.
10 1901 First Avenue, Suite 400
11 San Diego, CA 92101
12 Tel: 619-295-4190 / Fax: 619-295-9529
13 **Attorney for Plaintiff Jose Hernandez**

13 I hereby certify that I am employed by CalExpress Messenger Service, San
14 Diego, California, at whose direction the personal service was made.

15 Executed January 30, 2008, at San Diego, California.

16 
17 **DIVERSIFIED LEGAL SERVICES**
18 **MESSENGER**